

1 The Honorable Brian D. Lynch
2 Adversary
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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re: Bankruptcy Case No. 11-41010 BDL
CDC PROPERTIES I, LLC,

Debtor.

MLMT 2005-MCP1 WASHINGTON
OFFICE PROPERTIES, LLC, a
Washington limited liability company,

Plaintiff,

-vs-

CDC PROPERTIES I, LLC, a Washington
limited liability company; OLYMPIA
OFFICE LLC, a New York limited
liability company; WA PORTFOLIO LLC,
a Delaware limited liability company;
MARINERS PORTFOLIO LLC, a
Virginia limited liability company; and
SEAHAWK PORTFOLIO LLC, a Florida
limited liability company,

Defendants.

Adversary Case No.

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
AVOIDANCE OF FRAUDULENT
TRANSFERS, AND BREACH OF CONTRACT

Plaintiff MLMT 2005-MCP1 WASHINGTON OFFICE PROPERTIES, LLC
("Noteholder") alleges:

PARTIES

1. CDC PROPERTIES I, LLC ("Debtor") is the debtor in Bankruptcy Case No. 11-
41010-BDL pending before this Court (the "CDC Bankruptcy"), and a defendant in this adversary
proceeding.

COMPLAINT

-1-

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1 2. Plaintiff Noteholder is a Washington limited liability company, and a creditor in the
2 CDC Bankruptcy and the Olympia Bankruptcies (defined below).

3 3. Defendant OLYMPIA OFFICE LLC (“Olympia”) is a New York limited liability
4 company, and a chapter 11 debtor before this Court in Case No. 17-44721-BDL.

5 4. Defendant WA PORTFOLIO LLC (“WA”) is a Delaware limited liability
6 company, and a chapter 11 debtor before this Court in Case No. 17-44722-BDL.

7 5. Defendant MARINERS PORTFOLIO LLC (“Mariners”) is a Virginia limited
8 liability company, and a chapter 11 debtor before this Court in Case No. 17-44723-BDL.

9 6. Defendant SEAHAWK PORTFOLIO LLC (“Seahawk”, and collectively with
10 Olympia, WA and Mariners, the “Olympia Entities”) is a Florida limited liability, and a chapter 11
11 debtor in Case No. 17-44724-BDL. The Olympia Entities’ bankruptcy cases (the “Pending
12 Olympia Bankruptcies”) are being jointly administered under Lead Case No. 17-44721-BDL.

JURISDICTION

14 7. Pursuant to 28 U.S.C. Section 1334(e), the United States District Court for the
15 Western District of Washington has exclusive jurisdiction over this matter. Pursuant to 28 U.S.C.
16 Section 157(a) and LCR 87, the District Court has referred to the bankruptcy judges of this district
17 all cases under Title 11 and proceedings arising under Title 11 or arising in or related to a case
18 under Title 11. This Court has jurisdiction over this Chapter 11 Case and this adversary
19 proceeding pursuant to, among other things, the provisions of 28 U.S.C. §§ 157(a) and 1334, 11
20 U.S.C. §§ 105 and 1142, Federal Rule of Bankruptcy Procedure ("FRBP") 7001, and the local
21 rules of the United States Bankruptcy Court for the Western District of Washington. This Court
22 also has jurisdiction over this adversary proceeding, and this adversary proceeding constitutes an
23 actual controversy between the parties, pursuant to the Federal Declaratory Judgment Act, 28
24 U.S.C. § 2201(a). Venue in this District for this adversary proceeding is proper pursuant to 28
25 U.S.C. § 1409(a).

1 8. By order entered March 23, 2018 in the Olympia Entities' bankruptcy cases, this
2 Court granted Noteholder relief from the automatic stay to bring this adversary proceeding.
3 Noteholder consents to this Court entering orders and final judgment in this adversary proceeding.

FACTS

5 | A. The Loans

6 9. On or about September 29, 2004, Merrill Lynch Mortgage Lending, Inc. (“Original
7 Lender”) loaned Debtor \$43,257,500 under two loans (the “Loans”). The Loans are evidenced by
8 a promissory note in the original principal face amount of \$40,700,000 (the “A Note”) and a
9 promissory note in the original principal face amount of \$2,557,500 (the “B Note”, and
10 collectively with the A Note, the “Notes”). The original maturity of the Notes was October 1,
11 2014.

12 10. As security for its obligations under the Notes, Debtor executed eleven Deeds of
13 Trust with Security Agreement, Assignment of Leases and Rents and Fixture Filings, eight of
14 which are still in effect (the “Deeds of Trust”). In the Deeds of Trust, Debtor granted the Original
15 Lender a first priority lien on what are now eight office properties in Seattle, Wenatchee, and
16 Lacey, Washington (the “Properties”).¹ As further security, Debtor also executed Assignments of
17 Leases and Rents and Security Deposits in favor of the Original Lender for each of the Properties
18 (the “Assignments of Rents”). The Loans and the Notes are cross-defaulted and cross-
19 collateralized.

20 11. On or about September 30, 2005 (recorded November 29, 2005), the Original
21 Lender assigned the Loans to Wells Fargo Bank N.A., as Trustee for the Registered Holders of
22 Merrill Lynch Mortgage Trust 2005-MCP1 Commercial Mortgage Pass-Through Certificates,
23 Series 2005-MCP1 (“Wells Fargo”) and U.S. Bank, N.A., as Successor-Trustee to LaSalle bank

26 ¹ While there originally were eleven properties and eleven deeds of trust securing the Loans, three
27 of the properties were sold and the corresponding deeds of trust reconveyed, leaving the Deeds of
Trust and the Properties as defined herein.

1 N.A., as Trustee for the benefit of the Certificate Holders of Commercial Mortgage Pass-Through
2 Certificates, Series MCCMT 2004-C2D (“U.S. Bank”).

3 B. Debtor’s Defaults Under the Loans, the Filing of This Bankruptcy, and the Plan

4 12. Debtor defaulted under the Loans beginning in October 2010, when it stopped
5 making payments on the B Note.

6 13. On February 10, 2011, Debtor filed the underlying bankruptcy case. On November
7 22, 2011, this Court confirmed Debtor’s Plan of Reorganization (the “Plan”).

8 14. Under the Plan, the Loans were restructured with revised monthly payment
9 amounts and a new maturity date of October 17, 2017, but the Notes, Deeds of Trust and
10 Assignments of Rents remained in effect pursuant to their terms, except with respect to the new
11 payment amounts and maturity date:

12 The Wells Fargo Claim will continue to be controlled by the existing loan
13 documents applicable to the Wells Fargo Claim . . .

14 Plan, Section V, page 10, lines 8-9.

15 The LaSalle Bank Claim will continue to be controlled by the existing
16 loan documents applicable to the LaSalle Bank Claim . . .

17 Plan, Section V, page 11, lines 1-2.

18 15. The Plan also prohibits the Debtor from transferring the Properties unless
19 contemporaneously therewith, Noteholder is paid in full on the Loans:

20 The Reorganized Debtor may sell or refinance the Real Property, or any
21 component thereof, at any time *if the proceeds of the sale or refinance
are sufficient to pay all Allowed Claims in Classes 1-5 . . .* (emphasis
added).

22 Plan, Section VII(6), page 14, lines 10-12.

23 16. This prohibition on transfers was a substantial inducement to Noteholder to agree
24 to the terms of the Plan, and an important component of the Plan. Noteholder relied on the
25 prohibition on transfers in entering into the Plan.

26 17. The Deeds of Trust, which remained in force and effect under the Plan, also
27 prohibit the transfer of the Properties without the prior written consent of Noteholder:

1 Borrower shall not Transfer, nor permit any Transfer, without the prior
2 written consent of Lender, which consent Lender may withhold in its sole
3 and absolute discretion.

4 Deed of Trust, Section 9.02. The definition of "Transfer" in the Deed of Trust contains no
5 applicable exceptions and an outright conveyance of the Properties is a "Transfer".

6 18. The Plan also contains the following jurisdiction retention provisions:

7 Following the Confirmation Date, the Bankruptcy Court shall retain
8 jurisdiction over the Reorganized Debtor and the Assets until the Plan is
9 fully consummated and an order closing the Case is entered by the
10 Bankruptcy Court.² The Bankruptcy Court's retained jurisdiction shall
11 give it authority to hear matters for purposes of administering the Plan,
12 including without limitation: . . . 5. To issue orders in aid of execution of
13 the Plan and to issue injunctions or take such other actions or make such
14 other orders as may be necessary or appropriate to restrain interference
15 with the Plan or its execution or implementation by any entity; . . . 8. To
16 determine any disputes arising in connection with the interpretation,
17 implementation, execution or enforcement of the Plan, the Confirmation
18 Order, or any other order of the Bankruptcy Court; 9. To recover all
19 Assets, wherever located.

20 Plan, Section XIV, pages 17-18.

21 C. Debtor's Post-Bankruptcy Defaults Under the Loans, the Non-Judicial Foreclosure
22 Proceedings, and the State Court Receivership Action

23 19. After confirmation of the Plan, Debtor defaulted under the B Note in July 2013 and
24 defaulted under the A Note in September 2015, by failing to make required payments under the
25 Notes.

26 20. On March 11, 2016, Noteholder commenced non-judicial foreclosure proceedings
27 of the Properties by mailing Notices of Default to Debtor.

28 21. In May, 2016, Noteholder filed a Petition to Appoint Custodial Receiver in
29 Washington state court to, among other things, obtain the appointment of a receiver over the
30 Properties (the "State Court Receivership Action").

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1 22. On May 19, 2016, the court in the State Court Receivership Action entered its
2 Order Appointing Custodial Receiver, pursuant to which JSH Properties, Inc. (the “Receiver”) was
3 appointed receiver over the Properties (the “Receivership Order”). The Receivership Order
4 reflects that Debtor “has failed to make monthly payments of principal and interest due under the
5 Notes and the Loan Documents” (Receivership Order, paragraph 1.5) and Debtor “is in default
6 under the terms of the Loan Documents” (Receivership Order, paragraph 1.6).

7 23. On or about July 1, 2016, based on Debtor’s defaults under the Notes, Noteholder
8 served (and subsequently recorded) Notices of Trustee’s Sales with respect to the Properties (the
9 “Notices of Sale”). Pursuant to the Notices of Sale, non-judicial foreclosure sales of the Properties
10 were scheduled for October 21, 2016.

11 D. Debtor’s Violation of the Plan and the Deeds of Trust By Purporting to Transfer the
12 Properties Per the Olympia Entities’ Persuasion

13 24. Eric D. Orse (“Orse”) is Debtor’s Manager and makes all decisions on behalf of
14 Debtor.

15 25. On July 19, 2016, Orse’s counsel received an email from an unknown individual
16 named Kazu Yamaguchi indicating that he wished to purchase the membership interests in the
17 Debtor for \$100,000.

18 26. Over the next week, when counsel for Orse and Yamaguchi exchanged drafts of an
19 agreement, they decided to restructure the transaction as a sale of the Properties instead of a sale of
20 membership interests.

21 27. Notwithstanding that both the Plan and the Deeds of Trust explicitly prohibit
22 Debtor from transferring the Properties unless Noteholder and Debtors’ other creditors are paid in
23 full from the proceeds of the transfer, on September 23, 2016, in direct violation of the clear and
24 unambiguous provisions of the Plan and the Deeds of Trust, Debtor purported to transfer all of the
25 Properties by Quitclaim Deeds (the “Quitclaim Deeds”) to the Olympia Entities without notice to,
26 or the consent of, Noteholder, and without paying the Notes in full.

27

COMPLAINT

-6-

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1 28. The Olympia Entities are four limited liability companies, as tenants in common:
2 Seahawk, a Florida limited liability company (30% interest); Mariners, a Virginia limited liability
3 company (10% interest); WA, a Delaware limited liability company (30% interest); and Olympia,
4 a New York limited liability company (30% interest).

5 29. In fact, Debtor and the Olympia Entities actively concealed the purported transfer
6 from Noteholder.

7 30. Debtor received a mere \$100,000 from the Olympia Entities in exchange for the
8 transfers, and is holding such funds.

9 31. The purported transfers of the Properties on September 23, 2016 were additional
10 defaults under the Notes and the Loans, as well as violations of the Plan and the Deeds of Trust.

11 32. The Olympia Entities did not exist until the time of the purported transfers.

12 33. At the time the Olympia Entities received the purported transfers, the Olympia
13 Entities maintained identical assets, had no assets other than the Properties and a few thousand
14 dollars, had no employees, had no secured creditors besides Noteholder, and had no unsecured
15 creditors other than professionals who engineered the purported transfers. The Olympia Entities'
16 only office was their purported principal place of business, the personal residence of a lawyer in
17 New York.

18 34. Orse and his counsel conducted no due diligence in connection with the purported
19 transfers.

20 35. In fact, Noteholder is informed and believes that one of the ultimate owners of the
21 Properties, Scott Switzer, had previously done business with CDC, gone through his own personal
22 bankruptcy, and been investigated by the United States Trustee for bankruptcy fraud.

23 36. Moreover, Noteholder is informed and believes that the other ultimate owners of
24 the Olympia Entities, Michael and Seth Pilevsky (and their family members), had engaged in
25 questionable property acquisitions under fact patterns similar to the Olympia Entities' acquisition
26 of the Properties.

27

COMPLAINT

-7-

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1 37. In one instance regarding real property in New York called “Sutton”, the lender
2 alleged that the Pilevskys, who “were strangers to” the subject real estate project, intentionally and
3 improperly induced breaches of contracts between a third party lender and third party borrower in
4 a scheme to benefit themselves and obtain an interest in the project.

5 38. Orse and his counsel knew of the Plan’s and the Deeds of Trusts’ explicit
6 prohibitions on transferring the Properties without fully repaying the Loans and the claims of
7 Debtor’s creditors, and explained his decision to make the purported transfers based on his
8 understanding that all claims under the Plan (necessarily including the Loans) had been paid.

9 39. Yet Orse stated that (i) he purported to transfer the Properties with Noteholder’s
10 liens attached to them (if the Loans had been repaid, the liens would have been reconveyed), and
11 (ii) he accepted only \$100,000 as payment for the Properties because of “what the lender believes
12 the balance [of the Loans] is and what I believe the balance is” – if the Loans had been repaid,
13 there would have been no liens attached to the Properties at the time of the purported transfers,
14 there would have been no balance, and the equity in the Properties would have been substantially
15 more than \$100,000. Orse’s explanations are inconsistent.

16 40. Moreover, in connection with negotiating the agreement to transfer the Properties
17 to the Olympia Entities with the Olympia Entities’ counsel, the Olympia Entities also knew of the
18 prohibition of the purported transfers.

19 41. Orse’s counsel provided the Deeds of Trust and the Plan to the Olympia Entities’
20 counsel.

21 42. In fact, prior to the proposed transfer of the Properties, Orse’s counsel specifically
22 identified to the Olympia Entities’ counsel the prohibitions on transfer set forth in the Plan.

23 43. Orse and the Olympia Entities did not obtain Noteholder’s consent to the proposed
24 transfers, or provide Noteholder advance notice of the proposed transfers.

25 44. In fact, when the title company handling the proposed transfers noted the
26 documentary prohibitions on transfer and asked the Olympia Entities’ counsel whether the title
27

1 company should notify Noteholder, the Olympia Entities' counsel told the title company not to
2 bring the proposed transfers to Noteholder's attention.

3 45. Further, because the title company would not record the Quit Claim Deeds without
4 providing prior notice of the proposed transfers to Noteholder and assurances that the proceeds of
5 the transfers would be sufficient to pay all of Debtor's claims, the Olympia Entities' counsel asked
6 the title company to return the Quit Claim Deeds to the Olympia Entities and the Olympia Entities
7 would record them, rather than notify Noteholder of the proposed transfers in advance thereof.

8 E. Wells' and U.S. Bank's Assignment of the Loans to Noteholder

9 46. On October 18, 2016, by, among other things, Assignments of Deeds of Trust and
10 Assignments of Assignment of Leases recorded October 19, 2016, Wells Fargo and U.S. Bank
11 assigned the Loans to Noteholder.

12 F. Current Status

13 47. On October 20, 2016, the day before the scheduled foreclosure of the Properties,
14 Olympia filed bankruptcy in the Eastern District of New York. The remaining Olympia Entities
15 filed bankruptcy in the Eastern District of New York shortly thereafter (collectively, the "EDNY
16 Bankruptcies"). The EDNY Bankruptcies were dismissed in October, 2017. On October 17,
17 2017, the Notes and the Loans matured and remain outstanding.

18 48. After the EDNY Bankruptcies were dismissed, Noteholder rescheduled the
19 foreclosures of the Properties.

20 49. On the eve of the rescheduled foreclosures, the Olympia Entities filed their second
21 set of bankruptcy cases before this Court – the Pending Olympia Bankruptcies.

22 50. By order entered January 18, 2018 in the Pending Olympia Bankruptcies, this
23 Court concluded that the Olympia Entities have no equity in the Properties, cannot confirm a plan
24 without Noteholder's consent, and filed the Pending Olympia Bankruptcies in bad faith, and
25 granted Noteholder relief from stay to proceed with the foreclosures of the Properties.

26 51. However, the Olympia Entities had filed litigation in the King County Superior
27 Court to enjoin the foreclosures (the "Injunction Litigation"). After this Court granted Noteholder

1 relief from the automatic stay to proceed with the foreclosure, while the King County Superior
2 Court denied the Olympia Entities' motion for an injunction enjoining the foreclosures, the
3 Washington Court of Appeal has granted discretionary appellate review of the denial of the
4 injunction and stayed the foreclosures pending resolution of the appeal. The issue of a
5 supersedeas bond pending appeal is currently before the King County Superior Court.

6 52. As of March 30, 2018, Noteholder is owed in excess of \$47 million on the Notes
7 and the Loans.

8 **FIRST CLAIM FOR RELIEF**

9 **(Declaratory Judgment - RCW 7.60.110(1)(c) – Against All Defendants)**

10 53. Noteholder incorporates by reference as though set forth in full herein, paragraphs
11 1 through 52, inclusive.

12 54. Pursuant to RCW 7.60.110(1)(c):

13 Except as otherwise ordered by the court, the entry of an order appointing a
14 general receiver or a custodial receiver with respect to all of a person's property
15 shall operate as a stay, applicable to all persons, of: . . . Any act to obtain
16 possession of estate property from the receiver, or to interfere with, or exercise
17 control over, estate property.

18 55. The Receiver's appointment under the Receivership Order was as a custodial
19 receiver with respect to all of Debtor's property. At the time Debtor purported to transfer the
20 Properties to the Olympia Entities, the Receivership Order was in effect.

21 56. Debtor's purported transfer of the Properties to the Olympia Entities was void and
22 of no force or effect under RCW 7.60.110(1)(c).

23 57. This Court should issue a declaratory judgment that Debtor's purported transfer of
24 the Properties to the Olympia Entities was void and of no force or effect under RCW
25 7.60.110(1)(c).

26 **SECOND CLAIM FOR RELIEF**

27 **(Declaratory Judgment – Bankruptcy Code Section 1142 – Against All Defendants)**

1 58. Noteholder incorporates by reference as though set forth in full herein, paragraphs
2 1 through 57, inclusive.

3 || 59. Pursuant to Bankruptcy Code Section 1142:

10 60. Debtor's purported transfer of the Properties to the Olympia Entities violated the
11 Plan and therefore was void and of no force under Bankruptcy Code Section 1142.

12 61. This Court should issue a declaratory judgment that Debtor's purported transfer of
13 the Properties to the Olympia Entities was void and of no force or effect under the Plan and
14 Bankruptcy Code Section 1142.

THIRD CLAIM FOR RELIEF

16 **(Reconveyance of Properties – Bankruptcy Code Sections 105 and 1142 – Against All**
17 **Defendants)**

18 62. Noteholder incorporates by reference as though set forth in full herein, paragraphs
19 1 through 61, inclusive.

20 63. The purported transfer of the Properties by Debtor to the Olympia Entities is
21 voidable under the Plan. Under Bankruptcy Code Sections 105 and 1142, this Court should issue
22 an injunction directing and ordering the Olympia Entities to reconvey the Properties to Debtor.

FOURTH CLAIM FOR RELIEF

(Intentional Fraudulent Transfer – RCW 19.40.041(1)(a) – Against All Defendants)

25 64. Noteholder incorporates by reference as though set forth in full herein, paragraphs
26 1 through 63, inclusive.

1 65. On September 23, 2016, with knowledge of the restrictions on transfer in the Plan
2 and the actual intent to hinder or delay Noteholder, who was and is a creditor of Debtor, Debtor
3 transferred the Properties to the Olympia Entities.

4 66. The September 23, 2016 transfer of the Properties to the Olympia Entities was
5 intended to hinder or delay Noteholder from exercising its rights and remedies, including its rights
6 and remedies with respect to the Properties.

7 67. Debtor's transfer of the Properties to the Olympia Entities has six of the non-
8 exclusive "badges of fraud" listed in RCW 19.40.041(2):

- The transfer was concealed from Noteholder.
- Before the transfer was made, Debtor had been sued.
- The transfer was of substantially all of Debtor's assets.
- The value of the consideration received by Debtor was not reasonably equivalent to the value of the assets transferred.
- Debtor was insolvent or became insolvent shortly after the transfer was made.
- The transfer occurred shortly after a substantial debt became due.

16 68. At the time of the transfer of the Properties by Debtor to the Olympia Entities,
17 Noteholder was a creditor of Debtor.

18 69. Pursuant to RCW 19.40.041(1)(a), Debtor's transfer of the Properties to the
19 Olympia Entities is an avoidable fraudulent transfer.

FIFTH CLAIM FOR RELIEF

(Constructive Fraudulent Transfer – RCW 19.40.041(1)(b)(i) – Against All Defendants)

22 70. Noteholder incorporates by reference as though set forth in full herein, paragraphs
23 1 through 69, inclusive.

24 71. Debtor did not receive reasonably equivalent value in exchange for the transfer of
25 the Properties to the Olympia Entities.

1 72. At the time of the transfer of the Properties to the Olympia Entities, Debtor was
2 engaged in a business for which the remaining assets were unreasonably small in relation to the
3 business.

4 73. At the time of the transfer of the Properties by Debtor to the Olympia Entities,
5 Noteholder was a creditor of Debtor.

6 74. Pursuant to RCW 19.40.041(1)(b)(i), Debtor's transfer of the Properties to the
7 Olympia Entities is an avoidable fraudulent transfer.

SIXTH CLAIM FOR RELIEF

(Constructive Fraudulent Transfer – RCW 19.40.041(1)(b)(ii) – Against All Defendants)

10 75. Noteholder incorporates by reference as though set forth in full herein, paragraphs
11 1 through 74, inclusive.

12 76. Debtor did not receive reasonably equivalent value in exchange for the transfer of
13 the Properties to the Olympia Entities.

14 77. At the time of the transfer of the Properties to the Olympia Entities, Debtor had
15 incurred debts beyond its ability to pay as they became due.

16 78. At the time of the transfer of the Properties by Debtor to the Olympia Entities,
17 Noteholder was a creditor of Debtor.

18 79. Pursuant to RCW 19.40.041(1)(b)(ii), Debtor's transfer of the Properties to the
19 Olympia Entities is an avoidable fraudulent transfer.

SEVENTH CLAIM FOR RELIEF

(Constructive Fraudulent Transfer – RCW 19.40.051(1) – Against All Defendants)

22 80. Noteholder incorporates by reference as though set forth in full herein, paragraphs
23 1 through 79, inclusive.

24 81. Debtor did not receive reasonably equivalent value in exchange for the transfer of
25 the Properties to the Olympia Entities.

26 82. At the time of the transfer of the Properties to the Olympia Entities, Debtor was
27 insolvent or became insolvent as a result of the transfer.

1 83. At the time of the transfer of the Properties by Debtor to the Olympia Entities,
2 Noteholder was a creditor of Debtor.

3 84. Pursuant to RCW 19.40.051(1), Debtor's transfer of the Properties to the Olympia
4 Entities is an avoidable fraudulent transfer.

EIGHTH CLAIM FOR RELIEF

(Breach of Contract – Deeds of Trust – Against Debtor)

7 85. Noteholder incorporates by reference as though set forth in full herein, paragraphs
8 1 through 84, inclusive.

9 86. Debtor breached the Deeds of Trust when Debtor purported to transfer the
10 Properties to the Olympia Entities.

11 87. As a result of Debtor's breach of the Deeds of the Deeds of Trust, Noteholder
12 suffered damages in an amount to be proven at trial.

NINTH CLAIM FOR RELIEF

(Breach of Contract – Plan – Against Debtor)

15 88. Noteholder incorporates by reference as though set forth in full herein, paragraphs
16 1 through 87, inclusive.

17 89. Debtor breached the Plan when Debtor purported to transfer the Properties to the
18 Olympia Entities.

19 90. As a result of Debtor's breach of the Plan, Noteholder suffered damages in an
20 amount to be proven at trial.

PRAYER FOR RELIEF

22 Noteholder requests that this Court enter a Judgment against Defendants (except for D.,
23 which applies only to Debtor) as follows:

24 A. A declaratory judgment that the purported transfer of the Properties by Debtor to
25 the Olympia Entities is void on its face and of no force or effect under RCW 7.60.110(1)(c),
26 Bankruptcy Code Section 1142, and the Plan.

1 B. An injunction under Bankruptcy Code Sections 105 and 1142 directing the
2 Olympia Entities to reconvey the Properties to Debtor, and enjoining Debtor from further
3 transferring the Properties.

4 C. Avoiding, pursuant to RCW 19.40.071, as a fraudulent transfer under RCW
5 19.40.041(1)(a), (1)(b)(i), (1)(b)(ii), and 19.40.051(1), the transfer of the Properties from Debtor to
6 the Olympia Entities and an injunction against further disposition by Debtor of the Properties.

7 D. A monetary judgment against Debtor in an amount to be proven at trial for
8 Noteholder's damages arising out of Debtor's breaches of the Deeds of Trust and the Plan.

9 E. Awarding attorneys' fees and costs to Noteholder as provided by law.

10 F. Awarding to Noteholder such other and further relief as is just and equitable.

11 || DATED this 30th day of March, 2018.

12 || LANE POWELL PC

By /s/ *Charles R. Ekberg*

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COMPLAINT

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